



have been wired into – and then immediately out of – these accounts. Generally, the balance remains the same, with money being transferred in and out of the account on the same day as needed.

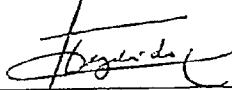
7. Currently, Grupo Mexico is working closely with Asarco and its lenders in an effort to restructure not only its own, but also Asarco's, lines of credit and other working capital facilities.

8. I take exception to the statement in Michael Sullivan's affidavit that Grupo Mexico "may remove from or encumber assets currently in New York." (Affidavit of Emergency of Michael T. Sullivan, Esq., dated June 11, 2002). As previously noted, Grupo Mexico has virtually no assets in New York (\$19,486.99 represents .0003% of Grupo Mexico's assets as of the end of 2001), and will do nothing to remove or encumber these limited assets.

9. An Order of Attachment against Grupo Mexico would complicate unnecessarily many of Grupo Mexico's obligations to lenders and financial institutions around the world. Since the requested order of attachment would pertain only to the assets of Grupo Mexico in New York, entry of such an order would not only largely be useless, but would constitute a draconian remedy with inherently unfair consequences to Grupo Mexico.

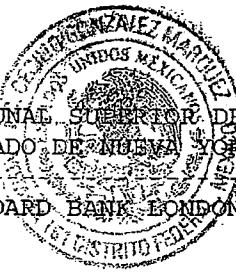
10. To avoid this unjust and unfair result, Grupo Mexico requests that it be permitted to deposit all of its New York-based assets with the Clerk of Court.

Further affiant sayeth naught.

  
Daniel Tellechea, CFO Grupo Mexico

Dated: June 25, 2002  
Mexico City, Mexico

NOTARIA 151  
COTEJADA



(Traducción)

TRIBUNAL SUPERIOR DEL ESTADO DE NUEVA YORK  
CONDADO DE NUEVA YORK

-----X  
STANDARD BANK LONDON,

:

:

Actora, :

:

Juicio N° 602148/02

-contra-

Ramos, J.

ASARCO INCORPORATED y  
GRUPO MÉXICO, S.A. DE C.V.

Parte 53 de IAS\*

:

Demandadas :

:

-----X

MÉXICO, DISTRITO FEDERAL)  
MÉXICO )

NOTARIA 151  
COTEJADA

DECLARACIÓN JURADA DE DANIEL TELLECHEA

DANIEL TELLECHEA, habiendo hecho la debida protesta,  
declara y manifiesta lo siguiente:

1. Soy el Director de Finanzas de la demandada Grupo México, S.A. de C.V. ("Grupo México"), cargo que he ocupado en Grupo México y sus antecesoras desde 1993. No obstante que en la actualidad también ocupo los cargos de Vicepresidente Ejecutivo, Director de Finanzas y Consejero de la codemandada Asarco Incorporated ("Asarco"), una subsidiaria ciento por ciento propiedad de Grupo México, suscribo esta declaración en representación de Grupo México en oposición a la solicitud de la actora de que se dicte una orden de embargo [Order of Attachment] contra esa entidad.

\* Se ignora el significado de estas siglas (T.).

2

2. Grupo México es una empresa internacional importante en el manejo de los recursos naturales y del transporte con sede en México, con domicilio en Baja California N° 200, Piso 6, Colonia Roma Sur, 06760 México, D.F., México. Grupo México es la tercera productora de cobre más grande del mundo, así como la cuarta productora de plata más grande y la quinta productora de zinc más grande. Grupo México es la segunda empresa más importante a nivel mundial en términos de reservas conocidas de mineral de cobre. A finales de 2001, los activos de Grupo México ascendían a US\$7,000 millones y su pasivo total ascendía a US\$4,500 millones.

3. Asarco es la obligada principal [prime obligor] conforme al título materia de este litigio. No obstante que Asarco tiene una presencia limitada en Nueva York, y está autorizada para desarrollar, y desarrolla, algunos negocios en Nueva York, Grupo México no tiene presencia en Nueva York y no desarrolla negocios en Nueva York.

4. Grupo México no tiene oficinas en Nueva York, no tiene empleados en Nueva York y no se anuncia ahí. Yo firmé en México, por aval y en representación de Grupo México, el título materia de este litigio, y las páginas de firma se remitieron, por servicio de envío privado, a Asarco en Arizona para que lo firmara el señor Genaro Larrea, Vicepresidente de Grupo México. Desde Arizona, Asarco envió el título a Trafigura AG en Connecticut.

GRUPO MÉXICO. DECLARACIÓN JURADA DE DANIEL TELLECHEA/L/V

CTOR. HERMOSILLO  
PERIJO TRADUCTOR  
UTORIZADO POR EL H.  
SUNAL SUPERIOR DE JUSTICIA  
DEL DISTRITO FEDERAL



 Mexico no tiene activos en el Estado de Nueva York, con excepción de dos cuentas bancarias, una con JP Morgan Chase con un saldo de US\$19,486.99 y otra con Banco Nacional de México, S.A. un saldo de US\$0. Estas cuentas han estado inactivas desde que se recibió aviso de la Orden de Prohibición Temporal [Temporary Restraining Order] ("TRO") que este Tribunal dictó contra Grupo México. Para explicar, el H. Juez Charles Ramos emitió una TRO para prohibir a Grupo México "transferir, vender, ocultar, depositar o de otro modo enajenar o interferir con todos y cada uno de los dineros, bienes o demás activos de Grupo México en poder o bajo la custodia, a nombre o propiedad de Grupo México por hasta la cantidad de US\$7,500,000". La TRO se trasmittió por telefax a las oficinas de Grupo México en México después de horas hábiles el 19 de junio de 2002. En mi calidad de Director de Finanzas, poco después me enteré de que se dictó esta TRO.

6. Con excepción de operaciones de "canalización" ["channeling"] ocasionales, las cuentas en Nueva York de Grupo México han estado virtualmente inactivas por espacio de varios meses. Por operaciones de "canalización" me refiero a que se han cableografiado fondos a estas cuentas e inmediatamente de ellas. En general, el saldo continúa igual, y el dinero se transfiere a y desde la cuenta [sic] el mismo día, según sea necesario.

7. En la actualidad, Grupo México trabaja estrechamente con Asarco y sus acreedores no sólo para

reestructurar sus propias líneas de crédito y demás líneas de capital de traspaso, sino también las de Asarco.

8. El Objeto 7b manifestado por Michael Sullivan en su declaración jurada en el sentido de que Grupo México "puede retirar de o gravar activos actualmente en Nueva York".

(Declaración Jurada de Emergencia del licenciado Michael T. Sullivan de fecha 11 de junio de 2002). Tal y como se observó con anterioridad, Grupo México virtualmente no tiene activos en Nueva York (US\$19,486.99 representa el .0003% de los activos de Grupo México a finales de 2001), y no hará nada para retirar o gravar estos activos limitados.

9. Una Orden de Embargo contra Grupo México complicaría innecesariamente muchas de las obligaciones de Grupo México a favor de acreedores e instituciones financieras en el mundo. Puesto que la Orden de Embargo solicitada se referiría exclusivamente a los activos de Grupo México en Nueva York, dictarla no sólo resultaría inútil en gran medida sino que constituiría una reparación draconiana con consecuencias inherentemente injustas para Grupo México.

10. Para evitar este resultado injusto e inmerecido, Grupo México solicita que se le permita depositar todos sus activos ubicados en Nueva York con el Secretario Judicial del Tribunal [Clerk of Court].

Fue todo lo que el declarante tuvo que decir.



(Firma ilegible)  
Daniel Tellechea,  
Director de Finanzas de  
Grupo México

Fecha: 25 de junio de 2002.  
México, D.F., México.

NOTARIA 151  
COTEJADA

El suscrito, VÍCTOR HERMOSILLO, autorizado por el H. Tribunal Superior de Justicia del Distrito Federal para ejercer como Perito Traductor Inglés-Español, CERTIFICA que el texto que antecede es una traducción fidedigna y completa del documento original redactado en inglés, del cual tuvo a la vista una copia fotostática.

México, D.F., a 27 de junio de 2002.

*Victor Hermosillo*  
VICTOR HERMOSILLO  
VICTOR HERMOSILLO  
AUTORIZADO POR EL H.  
TRIBUNAL SUPERIOR DE JUSTICIA  
DEL DISTRITO FEDERAL

--- EL SUSCRITO LICENCIADO CECILIO GONZALEZ MARQUEZ,  
TITULAR DE LA NOTARIA PUBLICA NUMERO CIENTO CINCUENTA Y  
UNO DEL DISTRITO FEDERAL, C E R T I F I C O: ---  
--- Que hoy cotejé esta copia fotostática con su  
original que tuve a la vista, el cual consta de tres  
fojas escritas por un solo lado, llevando como anexo,  
una traducción elaborada por el señor VICTOR HERMOSILLO,  
autorizado por el Honorable Tribunal Superior de  
Justicia del Distrito Federal, con fecha veintisiete de  
junio del dos mil dos y que se encuentra escrita en  
cinco fojas por un solo lado, ---  
y hago constar que la presente copia fotostática que  
certifico, concuerda íntegramente en todo con su citado  
original con el que la hallé de entera conformidad.  
Dicha copia se relaciona con el registro de cotejos  
número veinte mil cuatrocientos doce de fecha dos de  
julio del dos mil dos, asentado en el libro de registro  
de cotejos número catorce. ---

--- Y EN FE DE VERDAD, EXPIDO LA PRESENTE  
CERTIFICACION PROTEGIDA CON KINEGRAMA, EN MEXICO,  
DISTRITO FEDERAL, A DOS DE JULIO DEL DOS MIL DOS,  
AUTORIZANDOLA CON MI FIRMA Y SELLO OFICIALES. DOY FE.

EL TITULAR DE LA NOTARIA PUBLICA NO. 151 DEL DISTRITO FEDERAL

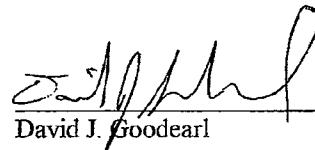


LIC. CECILIO GONZALEZ MARQUEZ.

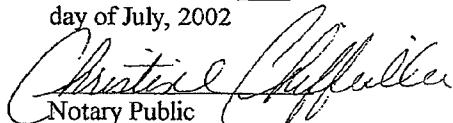
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Affidavit of Daniel Tellechea, dated June 25, 2002, and Affirmation of David J. Goodearl, Esq. in Opposition to Plaintiff's Motion for Prejudgment Attachment, were served by first class mail, on July 9, 2002, on Sullivan & Worcester, LLP, 565 Fifth Avenue, New York, NY 10017.

Dated: July 9, 2002  
New York, New York

  
\_\_\_\_\_  
David J. Goodearl

Sworn to me this 9<sup>th</sup>  
day of July, 2002

  
\_\_\_\_\_  
Christine Chiffriller  
Notary Public

CHRISTINE CHIFFRILLER  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01CH6033498  
QUALIFIED IN BRONX COUNTY  
COMMISSION EXPIRES NOVEMBER 22, 2005

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION

STANDARD BANK LONDON,

Plaintiff,  
-against-

Index No. 602148/02

ASARCO INCORPORATED and  
GRUPO MEXICO, S.A. de C.V.

Defendants.

FILED

OCT 17 2002

Charles Edward Ramos, J.S.C.:

COUNTY CLERK'S OFFICE  
NEW YORK

Sequence Nos. 001 and 002 are combined for disposition. In sequence no. 001, plaintiff Standard Bank London (Standard Bank) moves, pursuant to CPLR 6201(a)(1), for a prejudgment order of attachment against the New York assets of defendant Grupo Mexico, S.A. de CV (Grupo Mexico). There is a temporary restraining order presently in effect pending determination of this motion.

In motion sequence no. 002, Standard Bank moves, pursuant to CPLR 3213, for summary judgment in lieu of complaint.

Standard Bank seeks to recover \$7,500,000 based upon a dishonored promissory note made to defendant Asarco Incorporated (Asarco) and guaranteed by Asarco's parent, defendant Grupo Mexico, S.A. de C.V. (Grupo Mexico).

Standard Bank is a banking corporation organized under the laws of the United Kingdom. Defendant Grupo Mexico is a corporation organized under the laws of the Republic of Mexico. Asarco is a New Jersey corporation.

On or about October 23, 2001, Asarco, a wholly owned

subsidiary of Grupo Mexico, entered into a forfait<sup>1</sup> financing agreement with Standard Bank's customer, non-party Trafigura A.G. (Trafigura), in connection with Asarco's purchase of copper from Trafigura. Pursuant to the agreement, Asarco executed a \$7,500,000 note (the Note), payable to Trafigura. Grupo Mexico guaranteed the forfait "per aval."<sup>2</sup>

As explained by the parties, a forfait is a form of trade finance usually involving the cross-border sales of goods. The payment of the obligation is often contemplated in a promissory note issued by the purchaser to the seller's order. Following the shipment of the goods to the purchaser, the note is sold to a bank or trade finance specialist, and the purchaser of the note then collects the proceeds at maturity.

Pursuant to its terms, the Note matured and was payable on February 1, 2002, at Chase Manhattan Bank<sup>3</sup> (Chase), in New York City, New York. On or about November 1, 2001, Trafigura indorsed and transferred the Note to Standard Bank.

On or after February 1, 2002, Standard Bank demanded payment at Chase. It is undisputed that, despite the demand, neither Grupo Mexico nor Asarco have made payment, and that both are in default on the Note and Guaranty.

Grupo Mexico argues that this court does not have personal or

---

<sup>1</sup> A forfait is similar to a letter of credit or promissory note.

<sup>2</sup>A "per aval" is a form of guaranty affixed to a note in a forfait transaction.

<sup>3</sup>Now JP Morgan Chase Bank.

quasi in rem jurisdiction over it, and that even assuming jurisdiction, an order of attachment would be oppressive, and would not provide any real security to Standard. It appears that Grupo Mexico maintains two bank accounts in New York, with one account having a balance of approximately \$19,000, and the other account having a zero balance.

Specifically, Grupo Mexico argues, among other things, that its mere furnishing of a guarantee of a note, to be paid in New York on behalf of a foreign corporation, does not suffice to establish personal jurisdiction over it, pursuant to CPLR 302(a)(1). It is further argued, that there is no basis for this court asserting quasi in rem jurisdiction since Grupo Mexico's property in New York bears no relationship to the underlying cause of action.

Finally, Grupo Mexico maintains that the "minimal assets" it retains in New York would not provide additional security to Standard, and that there is no reason to believe that Grupo Mexico would conceal or dissipate its assets to warrant an attachment.

Standard Bank argues that Grupo Mexico's jurisdictional arguments are barred by collateral estoppel, based upon Justice Ira Gammerman's decision and order in Westdeutsche Landesbank Girozentrale v Asarco, Incorporation and Grupo Mexico, S.A. d C.V., NY Sup Ct, Index No. 600673/02 (April 26, 2002) (the WestLB Case). Standard Bank further argues that, even if collateral estoppel is inapplicable, there is ample basis for this court's finding that Grupo Mexico is subject to this court's jurisdiction.

In the WestLB Case, Grupo Mexico guaranteed a promissory note identical (except for the amount) to the subject Note in the instant action.<sup>4</sup> Grupo Mexico made the identical argument that it makes in this action, i.e., that its mere act of guaranteeing the payment of a note in New York is insufficient to subject it to the jurisdiction of the New York court. Justice Gammerman found *personam* jurisdiction, and directed judgment in plaintiff's favor. Grupo Mexico thereafter paid the resulting judgment, without taking any appeal of Justice Gammerman's decision and order.

The equitable doctrine of equitable estoppel is "... based upon the general notion that it is not fair to permit a party to relitigate an issue that has already been decided against it." (*Kaufman v Lilly and Co.*, 65 NY2d 449, 455 [1985]). Its basic elements are: "[f]irst, the identical issue necessarily must have been decided in the prior action and be decisive of the present action, and second, the party to be precluded from relitigating the issue must have had a full and fair opportunity to contest the prior determination" (*Kaufman v Lilly and Co.*, *supra* at 455 [citing *Gilberg v Barbieri*, 53 NY2d 285, 291 [ ]; see also, *Matter of Juan c. v Cotrines*, 89 NY2d 659, 667 [1997] ]..

Asarco, which is a direct, wholly-owned subsidiary of Grupo Mexico, is a New York resident. Asarco is the party for whom the benefit of the guarantee was made. The Note was made payable to the defendants' New York bank. This court finds the exercise of

---

<sup>4</sup>The WESTLB Case also had the identical obligee, Trafigura, as the obligee in the instant action.

jurisdiction over Grupo to be appropriate.

This court has considered Grupo Mexico's remaining arguments and found them to be without merit.

Dated: October 10, 2002

9/

\_\_\_\_\_  
J.S.C.

FILED  
OCT 17 2002  
COUNTY CLERK'S OFFICE  
NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Ramos

*Justice*

PART 53m

Stand and Barr London

INDEX NO.

60248/02

- v -

MOTION DATE

MOTION SEQ. NO.

001

MOTION CAL. NO.

Asarco Inc

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

IS DISPOSED OF  
IN ACCORDANCE WITH THE ACCOMPANYING  
MEMORANDUM DECISION

FILED  
OCT 17 2002  
COUNTY CLERK'S OFFICE  
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO  
JUSTICE

Dated: Oct 18 2002

*J.S.C.*

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Charles Edward Ramos 53  
Justice PART

*Standard Bk. London*

INDEX NO.

G 602148-02

*asarco Inc etc*

MOTION DATE

02

MOTION SEQ. NO.

MOTION CAL. NO.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

JUSTICE  
MOTION/CASE IS RESPECTFULLY REFERRED TO

Dated: 10/16/02

FILED

OCT 17 2002

COUNTY CLERK'S OFFICE  
NEW YORK

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

STANDARD BANK LONDON,

Plaintiff,

- against -

ASARCO INCORPORATED and  
GRUPO MEXICO, S.A. DE C.V.,

Defendants.

Index No. 602148/02  
Justice Ramos

IAS Part 53

**NOTICE OF ENTRY**

PLEASE TAKE NOTICE that the within is a true copy of the Order and  
Memorandum Decision dated October 10, 2002 and duly entered by the above-named  
court in the office of the Clerk on October 10, 2002.

**FILED**

Dated: New York, New York  
October 18, 2002

OCT 23 2002

SULLIVAN & WORCESTER COUNTY CLERK'S OFFICE  
NEW YORK

By: MTS  
Michael T. Sullivan  
565 Fifth Avenue  
New York, New York 10017  
(212) 486-8200  
*Attorneys for Plaintiff*

To: Kent Beatty & Gordon, LLP  
425 Park Avenue  
New York, New York 10022  
*Attorneys for Defendants*

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Ramos

*Justice*

PART S3m

Standard Bank London

- v -

Asarco Inc

INDEX NO.

602148/02

MOTION DATE

MOTION SEQ. NO.

001

MOTION CAL. NO.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

FILED  
OCT 17 2002  
COUNTY CLERK'S OFFICE  
NEW YORK

IS DISPOSED OF  
ACCORDING TO THE ACCOMPANYING  
MEMORANDUM DECISION

ION/CASE IS RESPECTFULLY REFERRED TO  
STICE

Dated: 08/10/02

*J.S.C.*

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK:COMMERCIAL DIVISION

-----X  
STANDARD BANK LONDON,

Plaintiff,  
-against-

Index No. 602148/02

ASARCO INCORPORATED and  
GRUPO MEXICO, S.A. de C.V.

Defendants.

-----X  
Charles Edward Ramos, J.S.C.:

Sequence Nos. 001 and 002 are combined for disposition. In sequence no. 001, plaintiff Standard Bank London (Standard Bank) moves, pursuant to CPLR 6201(a)(1), for a prejudgment order of attachment against the New York assets of defendant Grupo Mexico, S.A. de CV (Grupo Mexico). There is a temporary restraining order presently in effect pending determination of this motion.

In motion sequence no. 002, Standard Bank moves, pursuant to CPLR 3213, for summary judgment in lieu of complaint.

Standard Bank seeks to recover \$7,500,000 based upon a dishonored promissory note made to defendant Asarco Incorporated (Asarco) and guaranteed by Asarco's parent, defendant Grupo Mexico, S.A. de C.V. (Grupo Mexico].

Standard Bank is a banking corporation organized under the laws of the United Kingdom. Defendant Grupo Mexico is a corporation organized under the laws of the Republic of Mexico. Asarco is a New Jersey corporation.

On or about October 23, 2001, Asarco, a wholly owned

FILED

OCT 17 2002

COUNTY CLERK'S OFFICE  
NEW YORK

subsidiary of Grupo Mexico, entered into a forfait<sup>1</sup> financing agreement with Standard Bank's customer, non-party Trafigura A.G. (Trafigura), in connection with Asarco's purchase of copper from Trafigura. Pursuant to the agreement, Asarco executed a \$7,500,000 note (the Note), payable to Trafigura. Grupo Mexico guaranteed the forfait "per aval."<sup>2</sup>

As explained by the parties, a forfait is a form of trade finance usually involving the cross-border sales of goods. The payment of the obligation is often contemplated in a promissory note issued by the purchaser to the seller's order. Following the shipment of the goods to the purchaser, the note is sold to a bank or trade finance specialist, and the purchaser of the note then collects the proceeds at maturity.

Pursuant to its terms, the Note matured and was payable on February 1, 2002, at Chase Manhattan Bank<sup>3</sup> (Chase), in New York City, New York. On or about November 1, 2001, Trafigura indorsed and transferred the Note to Standard Bank.

On or after February 1, 2002, Standard Bank demanded payment at Chase. It is undisputed that, despite the demand, neither Grupo Mexico nor Asarco have made payment, and that both are in default on the Note and Guaranty.

Grupo Mexico argues that this court does not have personal or

---

<sup>1</sup> A forfait is similar to a letter of credit or promissory note.

<sup>2</sup> A "per aval" is a form of guaranty affixed to a note in a forfait transaction.

<sup>3</sup>Now JP Morgan Chase Bank.

quasi in rem jurisdiction over it, and that even assuming jurisdiction, an order of attachment would be oppressive, and would not provide any real security to Standard. It appears that Grupo Mexico maintains two bank accounts in New York, with one account having a balance of approximately \$19,000, and the other account having a zero balance.

Specifically, Grupo Mexico argues, among other things, that its mere furnishing of a guarantee of a note, to be paid in New York on behalf of a foreign corporation, does not suffice to establish personal jurisdiction over it, pursuant to CPLR 302(a)(1). It is further argued, that there is no basis for this court asserting quasi in rem jurisdiction since Grupo Mexico's property in New York bears no relationship to the underlying cause of action.

Finally, Grupo Mexico maintains that the "minimal assets" it retains in New York would not provide additional security to Standard, and that there is no reason to believe that Grupo Mexico would conceal or dissipate its assets to warrant an attachment.

Standard Bank argues that Grupo Mexico's jurisdictional arguments are barred by collateral estoppel, based upon Justice Ira Gammerman's decision and order in Westdeutsche Landesbank Girozentrale v Asarco, Incorporation and Grupo Mexico, S.A. de C.V., NY Sup Ct, Index No. 600573/02 (April 26, 2002) (the WestLP Case). Standard Bank further argues that, even if collateral estoppel is inapplicable, there is ample basis for this court's finding that Grupo Mexico is subject to this court's jurisdiction.

In the WestLB Case, Grupo Mexico guaranteed a promissory note identical (except for the amount) to the subject Note in the instant action.<sup>4</sup> Grupo Mexico made the identical argument that it makes in this action, i.e., that its mere act of guaranteeing the payment of a note in New York is insufficient to subject it to the jurisdiction of the New York court. Justice Gammerman found *personam* jurisdiction, and directed judgment in plaintiff's favor. Grupo Mexico thereafter paid the resulting judgment, without taking any appeal of Justice Gammerman's decision and order.

The equitable doctrine of equitable estoppel is "... based upon the general notion that it is not fair to permit a party to relitigate an issue that has already been decided against it." (*Kaufman v Lilly and Co.*, 65 NY2d 449, 455 [1985]). Its basic elements are: "[f]irst, the identical issue necessarily must have been decided in the prior action and be decisive of the present action, and second, the party to be precluded from relitigating the issue must have had a full and fair opportunity to contest the prior determination" (*Kaufman v Lilly and Co.*, *supra* at 455 [citing *Gilberg v Barbieri*, 53 NY2d 285, 291 [ ]; see also, *Matter of Juan C. v Cotrines*, 89 NY2d 659, 667 [1997]]).

Asarco, which is a direct, wholly-owned subsidiary of Grupo Mexico, is a New York resident. Asarco is the party for whom the benefit of the guarantee was made. The Note was made payable to the defendants' New York bank. This court finds the exercise of

---

<sup>4</sup>The WESTLB Case also had the identical obligee, Trafigura, as the obligee in the instant action.

jurisdiction over Grupo to be appropriate.

This court has considered Grupo Mexico's remaining arguments and found them to be without merit.

Dated: October 10, 2002



J.S.C.

FILED

OCT 17 2002

COUNTY CLERK'S OFFICE  
NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

----- X  
STANDARD BANK LONDON,

Plaintiff,

- against -

ASARCO INCORPORATED and  
GRUPO MEXICO, S.A. DE C.V.,

Defendants.

Index No. 602148/02  
Justice Ramos

IAS Part 53

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK )  
) ss.  
COUNTY OF NEW YORK )

RICHARD J. LOMBARDO, being duly sworn, says: that I am over the age of eighteen years and am not a party herein, that I reside in Kings County, and that on the 21st day of October 2002, I served a true copy of the within NOTICE OF ENTRY to the attorneys hereinafter named by enclosing it in a properly addressed, postpaid envelope, and depositing said envelope in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State.

NAME

Address

Jack A. Gordon, Esq.  
Kent, Beatty & Gordon, LLP

425 Park Avenue  
New York, New York 10022-3598



RICHARD J. LOMBARDO

Sworn to before me this  
21st day of October 2002

Michele Thompson  
Notary Public

MICHELE THOMPSON  
Notary Public, State of New York  
No. 30-4827374  
Qualified in Nassau County  
Commission Expires December 31, 2002

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

STANDARD BANK LONDON,

Index No. 602148/02

Justice Ramos

Plaintiff,

IAS Part 53

- against -

ASARCO INCORPORATED and  
GRUPO MEXICO, S.A. DE C.V.,

**NOTICE OF  
SETTLEMENT OF  
ORDER**

Defendants.

PLEASE TAKE NOTICE, that the annexed proposed order will be presented to the Honorable Charles E. Ramos, at a Civil Term of this Court, held at the courthouse thereof, located at 60 Centre Street New York, New York, IAS Part 53 on the 28<sup>th</sup> day of October, 2002 at 9:30 a.m. or as soon thereafter as counsel can be heard, for settlement and signature.

Dated: New York, New York  
October 18, 2002

SULLIVAN & WORCESTER LLP

By:

Michael T. Sullivan

565 Fifth Avenue

New York, New York 10017

(212) 486-8200

Attorneys for Plaintiff

**FILED**

To: Kent Beatty & Gordon, LLP  
425 Park Avenue  
New York, New York 10022  
Attorneys for Defendants

**NOV 12 2002**

**COUNTY CLERK'S OFFICE  
NEW YORK**

At a Term, Part 53, of the  
Supreme Court of the State of  
New York, held in and for  
the County of New York at  
60 Centre Street, New York,  
New York on the 5th day of  
~~October~~, 2002.

*November*

P R E S E N T:

HONORABLE CHARLES E. RAMOS,  
Justice

-----x  
STANDARD BANK LONDON, : Index No. 602148/02  
: Plaintiff, :  
: - against - :  
: ASARCO INCORPORATED and :  
: GRUPO MEXICO, S.A. DE C.V., :  
: Defendants. :  
-----x

ORDER

FILED  
NOV 12 2002  
SUPERIOR CLERK'S OFFICE  
NEW YORK

Plaintiff Standard Bank London, having made a motion pursuant to CPLR 3213  
for summary judgment in favor of Standard Bank London and against defendants Asarco  
Incorporated and Grupo Mexico, S.A. de C.V., and the motion having come on to be heard on  
July 31, 2002, and due deliberation having been had thereon,

NOW upon the reading of the Affidavit of Michael Mullen, sworn to on June 6,  
2002, the exhibits thereto, the Attorney's Statement of Michael T. Sullivan, dated June 11, 2002,  
the exhibits thereto, the Affidavit of Emergency of Michael T. Sullivan, dated June 11, 2002, the  
exhibits thereto, the opposition affirmation of David J. Goodearl dated June 27, 2002, the  
exhibits thereto, the opposition Affidavit of Daniel Tellechea, sworn to on June 25, 2002, the  
exhibits thereto, the Reply Attorney's Statement of Mariano Schwed, dated July 3 2002, the  
exhibits thereto, the Summons and Notice of Motion for Summary Judgment in Lieu of

Complaint (and supporting papers), and upon all the pleadings and prior proceedings in this action, upon, and the decision of the Court as contained in the Order and Memorandum Decision dated October 10, 2002;

NOW, therefore, on motion of Sullivan & Worcester, LLP, attorneys for Standard Bank London, it is therefore,

ORDERED that the motion by plaintiff Standard Bank London for summary judgment against Mexicana de Cobre S.A. de C.V. and Grupo Minero Mexico, S.A. de C.V is granted; and it is further

ORDERED that plaintiff Standard Bank London have judgment against defendants Asarco Incorporated and Grupo Mexico, S.A. de C.V. , jointly and severally, in the principal amount of \$7,500,000.00 together with interest thereon at the statutory rate, from February 1, 2002, the date of maturity of the Note at issue, as computed by the Clerk, plus interest thereon at the statutory rate thereafter, and the costs and disbursements of this action; and it is further

ORDERED that the Clerk is directed to enter judgments accordingly against defendants Asarco Incorporated and Grupo Mexico, S.A. de C.V., and it is further

ORDERED that clerk is directed to enter judgment accordingly.

ENTERED *JSC* COUNTY CLERK'S OFFICE  
NOV 12 2002  
NEW YORK  
J.S.C.  
HON. CHARLES E. RAMOS

Obtained by Court Alert

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: *Ramona*

PART: *22*

Justice

Stand and Sane London

INDEX NO. *60244/02*

MOTION DATE

MOTION SEQ. NO. *100*

MOTION CAL. NO.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits

Replying Affidavits

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

~~IS DISPOSED OF  
ACCORDING TO THE ACCOMPANYING  
MEMORANDUM OF DECISION~~

MOTION/CASE IS RESPECTFULLY REFERRED TO  
JUSTICE

Dated: *7/10/02*

*J.S.C.*

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION

-----X  
STANDARD BANK LONDON,

Plaintiff,

-against-

Index No. 602148/02

ASARCO INCORPORATED and  
GRUPO MEXICO, S.A. de C.V.

Defendants.

-----X

Charles Edward Ramos, J.S.C.:

Sequence Nos. 001 and 002 are combined for disposition. In sequence no. 001, plaintiff Standard Bank London (Standard Bank) moves, pursuant to CPLR 6201(a)(1), for a prejudgment order of attachment against the New York assets of defendant Grupo Mexico, S.A. de CV (Grupo Mexico). There is a temporary restraining order presently in effect pending determination of this motion.

In motion sequence no. 002, Standard Bank moves, pursuant to CPLR 3213, for summary judgment in lieu of complaint.

Standard Bank seeks to recover \$7,500,000 based upon a dishonored promissory note made to defendant Asarco Incorporated (Asarco) and guaranteed by Asarco's parent, defendant Grupo Mexico, S.A. de C.V. (Grupo Mexico).

Standard Bank is a banking corporation organized under the laws of the United Kingdom. Defendant Grupo Mexico is a corporation organized under the laws of the Republic of Mexico. Asarco is a New Jersey corporation.

On or about October 23, 2001, Asarco, a wholly owned

subsidiary of Grupo Mexico, entered into a forfait<sup>1</sup> financing agreement with Standard Bank's customer, non-party Trafigura A.G. (Trafigura), in connection with Asarco's purchase of copper from Trafigura. Pursuant to the agreement, Asarco executed a \$7,500,000 note (the Note), payable to Trafigura. Grupo México guaranteed the forfait "per aval."<sup>2</sup>

As explained by the parties, a forfait is a form of trade finance usually involving the cross-border sales of goods. The payment of the obligation is often contemplated in a promissory note issued by the purchaser to the seller's order. Following the shipment of the goods to the purchaser, the note is sold to a bank or trade finance specialist, and the purchaser of the note then collects the proceeds at maturity.

Pursuant to its terms, the Note matured and was payable on February 1, 2002, at Chase Manhattan Bank<sup>3</sup> (Chase), in New York City, New York. On or about November 1, 2001, Trafigura indorsed and transferred the Note to Standard Bank.

On or after February 1, 2002, Standard Bank demanded payment at Chase. It is undisputed that, despite the demand, neither Grupo Mexico nor Asarco have made payment, and that both are in default on the Note and Guaranty.

Grupo Mexico argues that this court does not have personal or

---

<sup>1</sup> A forfait is similar to a letter of credit or promissory note.

<sup>2</sup>A "per aval" is a form of guaranty affixed to a note in a forfait transaction.

<sup>3</sup>Now JP Morgan Chase Bank.

quasi in rem jurisdiction over it, and that even assuming jurisdiction, an order of attachment would be oppressive, and would not provide any real security to Standard. It appears that Grupo Mexico maintains two bank accounts in New York, with one account having a balance of approximately \$19,000, and the other account having a zero balance.

Specifically, Grupo Mexico argues, among other things, that its mere furnishing of a guarantee of a note, to be paid in New York on behalf of a foreign corporation, does not suffice to establish personal jurisdiction over it, pursuant to CPLR 302(a)(1). It is further argued, that there is no basis for this court asserting quasi in rem jurisdiction since Grupo Mexico's property in New York bears no relationship to the underlying cause of action.

Finally, Grupo Mexico maintains that the "minimal assets" it retains in New York would not provide additional security to Standard, and that there is no reason to believe that Grupo Mexico would conceal or dissipate its assets to warrant an attachment.

Standard Bank argues that Grupo Mexico's jurisdictional arguments are barred by collateral estoppel, based upon Justice Ira Gammerman's decision and order in Westdeutsche Landesbank Girozentrale v Asarco, Incorporation and Grupo Mexico, S.A. d C.V., NY Sup Ct, Index No. 600673/02 (April 26, 2002) (the WestDE Case). Standard Bank further argues that, even if collateral estoppel is inapplicable, there is ample basis for this court's finding that Grupo Mexico is subject to this court's jurisdiction.

In the WestLB Case, Grupo Mexico guaranteed a promissory note identical (except for the amount) to the subject Note in the instant action.<sup>4</sup> Grupo Mexico made the identical argument that it makes in this action, i.e., that its mere act of guaranteeing the payment of a note in New York is insufficient to subject it to the jurisdiction of the New York court. Justice Gammerman found *personam* jurisdiction, and directed judgment in plaintiff's favor. Grupo Mexico thereafter paid the resulting judgment, without taking any appeal of Justice Gammerman's decision and order.

The equitable doctrine of equitable estoppel is "... based upon the general notion that it is not fair to permit a party to relitigate an issue that has already been decided against it." (*Kaufman v Lilly and Co.*, 65 NY2d 449, 455 [1985]). Its basic elements are: "[f]irst, the identical issue necessarily must have been decided in the prior action and be decisive of the present action, and second, the party to be precluded from relitigating the issue must have had a full and fair opportunity to contest the prior determination" (*Kaufman v Lilly and Co.*, *supra* at 455 [citing *Gilberg v Barbieri*, 53 NY2d 285, 291 [ ]; see also, *Matter of Juan C. v Cotrines*, 89 NY2d 659, 667 [1997]..

Asarco, which is a direct, wholly-owned subsidiary of Grupo Mexico, is a New York resident. Asarco is the party for whom the benefit of the guarantee was made. The Note was made payable to the defendants' New York bank. This court finds the exercise of

---

<sup>4</sup>The WESTLB Case also had the identical obligee, Trafigura, as the obligee in the instant action.

jurisdiction over Grupo to be appropriate.

This court has considered Grupo Mexico's remaining arguments and found them to be without merit.

Dated: October 10, 2002

  
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----x  
STANDARD BANK LONDON,

: Index No. 602148/02

Plaintiff,

: Justice Ramos

- against -

: IAS Part 53

ASARCO INCORPORATED and  
GRUPO MEXICO, S.A. DE C.V.,

: JUDGMENT

Defendants.

Plaintiff Standard Bank London, with its principal place of business at Cannon Bridge House, 25 Dowgate Hill, London, EC4R 2SB, having commenced an action pursuant to CPLR 3213 by serving a summons and motion for summary judgment in lieu of complaint against defendant Asarco, Incorporated and defendant Grupo Mexico, S.A. de C.V. and that motion having come to be heard on July 31, 2002 and due deliberation having been had thereon, and the Court having rendered its decision in the Order and Memorandum Decision dated October 10, 2002 and in the Order dated November 8, 2002, which directed, inter alia, that plaintiff Standard Bank London have judgment against defendant Asarco, Incorporated and defendant Grupo Mexico, S.A. de C.V. as demanded in the motion.

NOW, upon motion of Sullivan & Worcester, LLP, attorneys for plaintiff Standard Bank London, it is hereby

ADJUDGED, that plaintiff Standard Bank London, Cannon Bridge House, 25 Dowgate Hill, London, EC4R 2SB, have judgment against defendant Asarco, Incorporated, 2575 Camelback, Phoenix, Arizona, 85016, and defendant Grupo Mexico, S.A. de C.V., Avenida Baja California 200, Colonia Roma Sur, Piso 4, CP 06760 Mexico, D.F., Mexico, jointly and

severally, in the principal amount of Seven ~~Million~~ Five Hundred Thousand Dollars (\$7,500,000), together with prejudgment interest calculated at the statutory rate of nine percent (9.00%) from February 1, 2002 ~~through November 11, 2002~~ in the sum of ~~Three Hundred~~ ~~\$525,205.48~~ ~~Thirty-Nine Thousand Three Hundred Seventy-Five Dollars (\$39,375.00)~~ plus costs and ~~disbursements of Four Hundred and Ninety-Five Dollars (\$495.00)~~, for a total sum of ~~Seven~~ ~~\$8,102,516.50~~ ~~Million Eight Hundred Thirty Nine Thousand Eight Hundred Seventy Dollars (\$7,839,870.00)~~, and the plaintiff Standard Bank London shall have execution therefor.

✓ Judgment signed this 12<sup>th</sup> day of November, 2002.

  
\_\_\_\_\_  
Clerk

FILED

NOV 12 2002

COUNTY CLERK'S OFFICE  
NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Index No. 602148/02

STANDARD BANK LONDON

Plaintiff(s)

Costs of

ASARCO, INCORPORATED and GRUPO MEXICO, S.A. de C.V. Defendant(s)

COSTS	\$	DISBURSEMENTS	
Costs before note of issue CPLR §8201 subd. 1	200.00	Fee for index number CPLR §8018(a)	170.00
Costs after note of issue CPLR §8201 subd. 2		Referee's fees CPLR §8301(a)(1), 8003(a)	185.00
Trial of issue CPLR §8201 subd. 3		Commissioner's compensation CPLR §8301(a) (2)	
Allowance by statute CPLR §8302(a),(b)		Clerk's fee, filing notice of pend. or attach. CPLR §8021(a)(10)	
Additional allowance CPLR §8302(d)		Entering and docketing judgment CPLR §8301(a)(7), 8016(a)(2)	
Motion costs CPLR §8202		Paid for searches CPLR §8301(a)(10)	
Appeal to Appellate Term CPLR §8203(b)		Affidavits & acknowledgments CPLR §8009	
Appeal to Appellate Division CPLR §8203(a)		Serving copy summons & complaint CPLR §8011(h)(1), 8301(d)	
Appeal to Court of Appeals CPLR §8204		Request for judicial intervention	75.00
Costs upon frivolous claims and counterclaims CPLR §8303-a		Note of issue CPLR §8020(a)	
		Paid referee's report CPLR §8301(a)(12)	
		Transcripts and filing CPLR §8021	
		Certified copies of papers CPLR §8301(a)(4)	
		Satisfaction piece CPLR §5020(a), 8021	
		Certified copy of judgment CPLR §8021	
		Postage CPLR §8301(a)(12)	
		Jury fee CPLR §8020(c)	
		Stenographers' fees CPLR §8002, 8301	
		Sheriff's fees on execution CPLR §8011, 8012	
		Sheriff's fees, attachment, arrest, etc. CPLR §8011	
		Paid printing cases CPLR §8301(a)(6)	
		Clerk's fees Court of Appeals CPLR §8301(a)(12)	
		Paid copies of papers CPLR §8016(a)(4)	
		Motion expenses CPLR §8301(b)	
		Fees for publication CPLR §8301(a)(3)	
		Serving subpoena CPLR §8011(h), 8301(d)	
		Paid for search CPLR §8301(a)(10)	35.00
I HEREBY CERTIFY THAT I HAVE ADJUSTED THIS BILL OF COSTS AT \$ 445.00			
NOV 12 2002 Thomas J. Scanlon CLERK			
Referee's Report Attendance of Witnesses CPLR §8001(a)(b)(c), 8301 (a)(1)			
FILED NOV 12 2002 COUNTY CLERK'S OFFICE NEW YORK			
COSTS .....	\$ 200.00		
DISBURSEMENTS.....	\$ 295.00	245.00	\$ 295.00
TOTAL .....	\$ 495.00	445.00	\$ 445.00

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----x  
STANDARD BANK LONDON,

Plaintiff,

- against -

ASARCO INCORPORATED and  
GRUPO MEXICO, S.A. DE C.V.,

Defendants.

: Index No. 602148/02

: Justice Ramos

: IAS Part 53

ATTORNEY'S  
AFFIRMATION FOR  
BILL OF COSTS

-----x

The undersigned, an attorney admitted to practice in the courts of this state, affirms: that I am a member of Sullivan & Worcester LLP, the attorneys of record for the Plaintiff in the above entitled action; that the foregoing disbursements have been or will be necessarily be made or incurred in this action and are reasonable in amount and that each of the persons named as witnesses attended as such witness on the trial, hearing or examination before trial herein the number of days set opposite their names; that each of said persons resided the number of miles set opposite their names, from the place of said trial, hearing or examination; and each of said persons, as such witness as aforesaid, necessarily traveled the number of miles to set opposite their names in traveling to, and the same distance in returning from the same place of trial, hearing or examination; and that copies of documents or papers as charged herein were actually and necessarily obtained for use.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: New York, New York  
November 11, 2002

  
Michael T. Sullivan

FILED

NOV 12 2002

COUNTY CLERK'S OFFICE  
NEW YORK

At a Term, Part 53, of the Supreme Court of the State of New York, held in and for the County of New York at 60 Centre Street, New York, New York on the 6th day of October, 2002.

*November*

P R E S E N T:

HONORABLE CHARLES E. RAMOS,  
Justice

x

STANDARD BANK LONDON,

Index No. 602148/02

Plaintiff,

IAS Part 53

- against -

ASARCO INCORPORATED and  
GRUPO MEXICO, S.A. DE C.V.,

Defendants.

x

Plaintiff Standard Bank London, having made a motion pursuant to CPLR 3213 for summary judgment in favor of Standard Bank London and against defendants Asarco Incorporated and Grupo Mexico, S.A. de C.V., and the motion having come on to be heard on July 31, 2002, and due deliberation having been had thereon,

NOW upon the reading of the Affidavit of Michael Mullen, sworn to on June 6, 2002, the exhibits thereto, the Attorney's Statement of Michael T. Sullivan, dated June 11, 2002, the exhibits thereto, the Affidavit of Emergency of Michael T. Sullivan, dated June 11, 2002, the exhibits thereto, the opposition affirmation of David J. Goodearl dated June 27, 2002, the exhibits thereto, the opposition Affidavit of Daniel Tellechea, sworn to on June 25, 2002, the exhibits thereto, the Reply Attorney's Statement of Mariano Schwed, dated July 3 2002, the exhibits thereto, the Summons and Notice of Motion for Summary Judgment in Lieu of

FILED  
NOV 12 2002  
COURT CLERK'S OFFICE  
NEW YORK

Complaint (and supporting papers), and upon all the pleadings and prior proceedings in this action, upon, and the decision of the Court as contained in the Order and Memorandum Decision dated October 10, 2002;

NOW, therefore, on motion of Sullivan & Worcester, LLP, attorneys for Standard Bank London, it is therefore,

ORDERED that the motion by plaintiff Standard Bank London for summary judgment against Mexicana de Cobre S.A. de C.V. and Grupo Minero Mexico, S.A. de C.V is granted; and it is further

ORDERED that plaintiff Standard Bank London have judgment against defendants Asarco Incorporated and Grupo Mexico, S.A. de C.V., jointly and severally, in the principal amount of \$7,500,000.00 together with interest thereon at the statutory rate, from February 1, 2002, the date of maturity of the Note at issue, as computed by the Clerk, plus interest thereon at the statutory rate thereafter, and the costs and disbursements of this action; and it is further

ORDERED that the Clerk is directed to enter judgments accordingly against defendants Asarco Incorporated and Grupo Mexico, S.A. de C.V., and it is further

ORDERED that clerk is directed to enter judgment accordingly.

E N T E R:

J.S.C.  
HON. CHARLES E. RAMOS

FILED  
NOV 12 2002

COUNTY CLERK'S OFFICE  
NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Ramos  
Justice

PART 53m

Standard Bank London

Asarco Inc

INDEX NO.

602148/02

MOTION DATE

MOTION SEQ. NO. 001

MOTION CAL. NO.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

FILED  
OCT 17 2002  
COUNTY CLERK'S OFFICE  
NEW YORK

IS DISPOSED OF  
ACCORDING TO THE ACCOMPANYING  
RECORDS

ON/CASE IS RESPECTFULLY REFERRED TO  
CLERK'S OFFICE

Dated: 01/10/02

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION

-----X  
STANDARD BANK LONDON,

Plaintiff,  
-----X  
-against-

Index No. 602148/02

ASARCO INCORPORATED and  
GRUPO MEXICO, S.A. de C.V.

Defendants.

-----X  
Charles Edward Ramos, J.S.C.:

FILED

OCT 17 2002

COUNTY CLERK'S OFFICE  
NEW YORK

Sequence Nos. 001 and 002 are combined for disposition. In sequence no. 001, plaintiff Standard Bank London (Standard Bank) moves, pursuant to CPLR 6201(a)(1), for a prejudgment order of attachment against the New York assets of defendant Grupo Mexico, S.A. de CV (Grupo Mexico). There is a temporary restraining order presently in effect pending determination of this motion.

In motion sequence no. 002, Standard Bank moves, pursuant to CPLR 3213, for summary judgment in lieu of complaint.

Standard Bank seeks to recover \$7,500,000 based upon a dishonored promissory note made to defendant Asarco Incorporated (Asarco) and guaranteed by Asarco's parent, defendant Grupo Mexico, S.A. de C.V. (Grupo Mexico).

Standard Bank is a banking corporation organized under the laws of the United Kingdom. Defendant Grupo Mexico is a corporation organized under the laws of the Republic of Mexico. Asarco is a New Jersey corporation.

On or about October 23, 2001, Asarco, a wholly owned

subsidiary of Grupo Mexico, entered into a forfait<sup>1</sup> financing agreement with Standard Bank's customer, non-party Trafigura A.G. (Trafigura), in connection with Asarco's purchase of copper from Trafigura. Pursuant to the agreement, Asarco executed a \$7,500,000 note (the Note), payable to Trafigura. Grupo Mexico guaranteed the forfait "per aval."<sup>2</sup>

As explained by the parties, a forfait is a form of trade finance usually involving the cross-border sales of goods. The payment of the obligation is often contemplated in a promissory note issued by the purchaser to the seller's order. Following the shipment of the goods to the purchaser, the note is sold to a bank or trade finance specialist, and the purchaser of the note then collects the proceeds at maturity.

Pursuant to its terms, the Note matured and was payable on February 1, 2002, at Chase Manhattan Bank<sup>3</sup> (Chase), in New York City, New York. On or about November 1, 2001, Trafigura indorsed and transferred the Note to Standard Bank.

On or after February 1, 2002, Standard Bank demanded payment at Chase. It is undisputed that, despite the demand, neither Grupo Mexico nor Asarco have made payment, and that both are in default on the Note and Guaranty.

Grupo Mexico argues that this court does not have personal or

---

<sup>1</sup> A forfait is similar to a letter of credit or promissory note.

<sup>2</sup> A "per aval" is a form of guaranty affixed to a note in a forfait transaction.

<sup>3</sup>Now JP Morgan Chase Bank.

quasi in rem jurisdiction over it, and that even assuming jurisdiction, an order of attachment would be oppressive, and would not provide any real security to Standard. It appears that Grupo Mexico maintains two bank accounts in New York, with one account having a balance of approximately \$19,000, and the other account having a zero balance.

Specifically, Grupo Mexico argues, among other things, that its mere furnishing of a guarantee of a note, to be paid in New York on behalf of a foreign corporation, does not suffice to establish personal jurisdiction over it, pursuant to CPLR 302(a)(1). It is further argued, that there is no basis for this court asserting quasi in rem jurisdiction since Grupo Mexico's property in New York bears no relationship to the underlying cause of action.

Finally, Grupo Mexico maintains that the "minimal assets" it retains in New York would not provide additional security to Standard, and that there is no reason to believe that Grupo Mexico would conceal or dissipate its assets to warrant an attachment.

Standard Bank argues that Grupo Mexico's jurisdictional arguments are barred by collateral estoppel, based upon Justice Ira Gammerman's decision and order in Westdeutsche Landesbank Girozentrale v Asarco, Incorporation and Grupo Mexico, S.A. de C.V., NY Sup Ct, Index No. 600673/02 (April 26, 2002) (the WestLB Case). Standard Bank further argues that, even if collateral estoppel is inapplicable, there is ample basis for this court's finding that Grupo Mexico is subject to this court's jurisdiction.

In the WestLB Case, Grupo Mexico guaranteed a promissory note identical (except for the amount) to the subject Note in the instant action.<sup>4</sup> Grupo Mexico made the identical argument that it makes in this action, i.e., that its mere act of guaranteeing the payment of a note in New York is insufficient to subject it to the jurisdiction of the New York court. Justice Gamerman found *personam* jurisdiction, and directed judgment in plaintiff's favor. Grupo Mexico thereafter paid the resulting judgment, without taking any appeal of Justice Gamerman's decision and order.

The equitable doctrine of equitable estoppel is " . . . based upon the general notion that it is not fair to permit a party to relitigate an issue that has already been decided against it." (*Kaufman v. Lilly and Co.*, 65 NY2d 449, 455 [1985]). Its basic elements are: "[f]irst, the identical issue necessarily must have been decided in the prior action and be decisive of the present action, and second, the party to be precluded from relitigating the issue must have had a full and fair opportunity to contest the prior determination" (*Kaufman v. Lilly and Co.*, *supra* at 455 [citing *Gilberg v. Barbieri*, 53 NY2d 285, 291 [ ]; see also, *Matter of Juan C. v. Cotrines*, 89 NY2d 659, 667 [1997] .

Asarco, which is a direct, wholly-owned subsidiary of Grupo Mexico, is a New York resident. Asarco is the party for whom the benefit of the guarantee was made. The Note was made payable to the defendants' New York bank. This court finds the exercise of

---

<sup>4</sup>The WESTLB Case also had the identical obligee, Trafigura, as the obligee in the instant action.

[Redacted]  
jurisdiction over Grupo to be appropriate.

This court has considered Grupo Mexico's remaining arguments and found them to be without merit.

Dated: October 10, 2002

*D*

J.S.C.

FILED  
OCT 17 2002  
COUNTY CLERK'S OFFICE  
NEW YORK

1-72  
**FILED AND  
DOCKETED**

NOV 12 2002  
AT 3:30 PM  
N.Y., CO. CLK'S OFFICE

STANDARD BANK LONDON,  
v.  
Plaintiff,  
ASARCO INCORPORATED and  
GRUPO MEXICO, S.A. DE C.V.,  
Defendants.

Index No. 602148 Year 20 02

SUPREME COURT: NEW YORK COUNTY

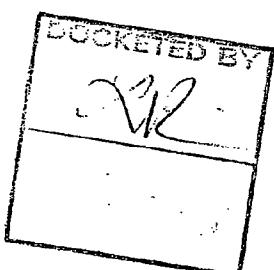
Order

NOV 13 2002

SULLIVAN & WORCESTER LLP

Attorneys for Standard Bank London

565 FIFTH AVENUE  
NEW YORK, NEW YORK 10017  
(212) 486 8200



SULLIVAN & WORCESTER LLP

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

STANDARD BANK LONDON,

Index No. 602148/02

Plaintiff,

Justice Ramos  
IAS Part 53

- against -

ASARCO INCORPORATED and  
GRUPO MEXICO, S.A. DE C.V.,

**STIPULATION AND ORDER**

Defendants.

WHEREAS, a judgment was entered in the above entitled action on November 12, 2002 in the Supreme Court of the State of New York, County of New York, in favor of plaintiff Standard Bank of London and against defendants Asarco Incorporated and Grupo Mexico, S.A. de C.V., jointly and severally, for the sum of \$8,025,650.48, which judgment was docketed on November 12, 2002 in the office of the Clerk of New York County; and

WHEREAS, the defendants have satisfied the judgment in full;

NOW THEREFORE, the Undertaking on Temporary Injunction, Bond No. CGB 8650-  
*Filed with the New York County Clerk on July 17, 2003*  
242, is cancelled and the surety company is hereby discharged from any and all liabilities.

Dated: New York, New York  
May 21, 2003

KENT, BEATTY & GORDON, LLP

By: Jack A. Gordon  
Jack A. Gordon, Esq.  
425 Park Avenue  
New York, NY 10022  
(212) 421-4300  
Attorneys for Defendants

SULLIVAN & WORCESTER LLP

By: Michael T. Sullivan  
Michael T. Sullivan  
565 Fifth Avenue  
New York, New York 10017  
(212) 486-8200  
Attorneys for Plaintiff

So Ordered:

JP

**FILED**

MAY 23 2003  
NEW YORK  
COUNTY CLERK'S OFFICE

SUPREME COURT: NEW YORK COUNTY

STANDARD BANK LONDON,

Plaintiff,

v.

ASARCO INCORPORATED and  
GRUPO MEXICO, S.A. DE C.V.,

Defendants.

STIPULATION AND ORDER

SULLIVAN & WORCESTER LLP

Attorneys for Standard Bank London

565 FIFTH AVENUE  
NEW YORK, NEW YORK 10017  
(212) 486-8200

FILED  
MY 23 2003  
COURT CLERKS OFFICE  
NEW YORK

Standard Bank London v. Asarco, Inc., et al.  
Index No. 602148/02  
Prejudgment Interest Calculation

Interest Period	Principle Balance	Statutory Interest Rate	Daily Interest	Number of Days	Total Interest for Period
02/01/02 to 02/28/02	\$ 7,500,000.00	9.00%	\$ 1,875.00	28	\$ 52,500.00
03/01/02 to 03/31/02	\$ 7,500,000.00	9.00%	\$ 1,875.00	31	\$ 58,125.00
04/01/02 to 04/30/02	\$ 7,500,000.00	9.00%	\$ 1,875.00	30	\$ 56,250.00
05/01/02 to 05/31/02	\$ 7,500,000.00	9.00%	\$ 1,875.00	31	\$ 58,125.00
06/01/02 to 06/30/02	\$ 7,500,000.00	9.00%	\$ 1,875.00	30	\$ 56,250.00
07/01/02 to 07/31/02	\$ 7,500,000.00	9.00%	\$ 1,875.00	31	\$ 58,125.00
08/01/02 to 08/31/02	\$ 7,500,000.00	9.00%	\$ 1,875.00	31	\$ 58,125.00
09/01/02 to 09/30/02	\$ 7,500,000.00	9.00%	\$ 1,875.00	30	\$ 56,250.00
10/01/02 to 10/31/02	\$ 7,500,000.00	9.00%	\$ 1,875.00	31	\$ 58,125.00
11/01/02 to 11/11/02	\$ 7,500,000.00	9.00%	\$ 1,875.00	11	\$ 20,625.00
<b>Total Prejudgment Interest</b>					<b>\$ 339,375.00</b>
<b>Judgment Amount</b>					<b>\$ 7,500,000.00</b>
<b>Total Judgment Amount Plus Prejudgment Interest</b>					<b>\$ 7,839,375.00</b>